

**STATE OF IDAHO  
OUTFITTERS AND GUIDES LICENSING BOARD  
SPECIAL BOARD MEETING**

**FINAL MINUTES**

**SEPTEMBER 27, 2019**

**(KEY: MSC = MOTION: MADE, SECOND: CARRIED  
MSF = MOTION: MADE, SECOND: FAILED)**

**THE SPECIAL MEETING OF THE IDAHO OUTFITTERS AND GUIDES LICENSING BOARD WAS CALLED TO ORDER AT 10:00 A.M. FRIDAY SEPTEMBER 27, 2019 IN THE MEETING ROOM AT THE IDAHO OUTFITTERS AND GUIDES LICENSING BOARD OFFICE, 1365 N. ORCHARD STREET ROOM 172 BOISE, IDAHO 83706. MEMBERS BOB BAROWSKY (CHAIRMAN), GEORGE MCQUISTON, LOUISE STARK AND WAYNE HUNSUCKER WERE PRESENT. ALSO PRESENT WERE EXECUTIVE DIRECTOR LORI THOMASON, BOARD ATTORNEYS JOAN CALLAHAN AND ROGER HALES, OFFICE SUPERVISOR AMANDA HARPER, OFFICE STAFF SUSAN KANPEK, TERESA SAUCEDA AND LINDA JORDAN. BOARD MEMBER TOM LONG WAS NOT PRESENT.**

**RULE REAUTHORIZATION DISCUSSION** – Board Attorney Joan Callahan reviewed the rule reauthorization recommendations to IDAPA 25.01.01 – Rules of the Idaho Outfitters and Guides Licensing Board. The Board received comprehensive comments on its chapter, and to assist the Board with reviewing the written comments and testimony from the Board’s rulemaking hearings, Ms. Callahan compiled and summarized all of the public and staff comments that had been received for each rule in the chapter. The IOGLB Rulemaking Guide to Public and Staff Comments is incorporated by reference into these minutes. Ms. Callahan added that the staff comments were primarily related to the Red Tape Reduction Act and the Licensing Freedom Act. The Board reviewed each rule on which there were comments. The Board accepted the staff recommendations, except as noted below, and the Board discussed significant, more substantive changes as follows:

**SECTION 002.16 DEFINITION OF HAZARDOUS EXCURSION:** Board staff and the Idaho Outfitters and Guides Association (IOGA) commented about removing the phrase “outside municipal limits” from the definition of hazardous excursion. The Board wants to ensure that removing this qualifier would not interfere with local municipalities’ rights and authorities. The Board did not make a change, but it identified this issue for further negotiated rulemaking.

**SECTION 005. LICENSE PRODUCTION:** The Board discussed whether to eliminate the requirement that a licensee carry a license with them when working in the field. The Board staff recommended giving licensees flexibility to provide proof of licensure rather than the physical license. The IOGA requested that the requirement be eliminated and recommended that officials could obtain information that the individual is in compliance with licensure requirements at a later time. Another public comment was in favor of keeping the proof of licensure requirement. The Board discussed the burden on the licensee, the concerns regarding effectiveness and efficiency of enforcement, and the benefit to the public of having licensees have proof of licensure with them.

**MSC (MOTION: MCQUISTON, SECOND: FAILED) ELIMINATE SECTION 005.**

**CONT. MSC (MOTION: HUNSUCKER, SECOND: STARK; AYES – HUNSUCKER, STARK, MCQUISTON AND BAROWSKY; NAYES – NONE) ADOPT THE SUGGESTED LANGUAGE IN SECTION 005 LICENSE PRODUCTION TO INCLUDE “OR PROOF OF LICENSURE”.**

**SECTION 007. LICENSE RESTRICTION:** Proceed with recommendations to Section 007 and 007.01-06. The Board discussed the need, administrative issues, and statutory support for the notification provisions in Section 007, the Board decided to eliminate all provisions of the rule except as it pertained to the temporary employment or limited “loan” of a guide between outfitters without requiring a license amendment. **MSC (MOTION: MCQUISTON, SECOND: HUNSUCKER; AYES – HUNSUCKER, MCQUISTON AND BAROWSKY; NAYES – STARK) ELIMINATE PARAGRAPH 007.05.d.**

**CONT. MSC (MOTION: HUNSUCKER, SECOND: STARK; AYES – HUNSUCKER, STARK, MCQUISTON AND BAROWSKY; NAYES – NONE) ELIMINATE PARAGRAPH 007.05.a.**

**SECTION 008. EMPLOYMENT OF OUTFITTERS:** The Board discussed the rule explaining the operation of the laws and rules when one outfitter is employing another outfitter as a guide or uses equipment that is owned by a different outfitter or guide. The IOGA and Orange Torpedo Trips requested the rule be eliminate or limited, particularly regarding the non-owner liability insurance requirement when the outfitter is not using its own equipment. The Board discussed whether the rule restrictions are overly broad or burdensome in achieving the Board’s goal to protect the public by ensuring proper and adequate insurance and clear responsibility for the client. Before making a change to the rule, the Board wants to ensure that clients would be sufficiently protected if the rule was eliminated or narrowed, and it wants to get input specifically from insurers in reexamining this rule as there was some conflicting discussion on the topic. **MSC (MOTION: STARK, SECOND: MCQUISTON; AYES – HUNSUCKER, STARK, MCQUISTON AND BAROWSKY; NAYES – NONE) RETAIN LANGUAGE IN SECTION 008 EMPLOYMENT OF OUTFITTERS, WITH THE SUGGESTED LANGUAGE CHANGE AND INCLUDE THIS IN FUTURE NEGOTIATED RULE MAKING.**

**SECTION 010. COMPLIANCE WITH LAWS:** The Board discussed the statutory requirement that applicants be of good moral character and its interpretation of that term as including any violation of local, state, or federal law. The Board noted that it has an evaluation system of convictions for when a license may be issued by the executive director and when the applicant must appear before the Board. The Board did not make changes beyond the recommendation for technical and organizational clean-up at this time.

**SECTION 020. EXAMINATION: MSC (MOTION: STARK, SECOND: HUSUCKER; AYES – HUNSUCKER, STARK, MCQUISTON AND BAROWSKY; NAYES – NONE) ACCEPT RECOMMENDATION AS PRESENTED TO ELIMINATE THE LIMITATION ON THE NUMBER OF RETAKES FOR THE EXAMINATION AND ALSO TO REDUCE THE WAITING TIME TO RETAKE THE EXAM TO FIVE (5) DAYS.**

**SECTION 023. THIRD PARTY AGREEMENTS:** The Board received several comments on the rule governing third party agreements (Sections 002.31 and 023) including requests to eliminate this rule as inhibiting business marketing and opportunities. The Board discussed the public protection reasons underlying the rule to ensure there is clear responsibility and liability for a client by the licensed outfitter, and the language of this rule could likely benefit from further clarity. Before making changes to the rules, the Board wanted to further examine whether the rule is sufficiently clear and achieves its purpose to ensure public protection. The Board will continue negotiated rulemaking on these rules.

**SECTION 030. OUTFITTER WAITING LISTS: MSC (MOTION: HUNSUCKER, SECOND: STARK; AYES – HUNSUCKER, STARK, MCQUISTON AND BAROWSKY; NAYES – NONE) ELIMINATE THE WAITING LIST APPLICATION FEE.**

**CONT. MSC (MOTION: STARK, SECOND: HUNSUCKER; AYES – HUNSUCKER, STARK, MCQUISTON AND BAROWSKY; NAYES – NONE) ELIMINATE SUBSECTION 030.07.**

**SECTION 034. GUIDE APPLICATION REQUIREMENTS:** The Board received a comment requesting to add hunter's education as requirement to qualify for a hunting guide license, and that such a requirement could replace some existing knowledge requirements in the rule because they are part of the current hunter's education course. This subject was added to the list for negotiated rulemaking because this would be a new license requirement and likely fell outside the scope of reauthorization and the Licensing Freedom Act of 2017, but the Board proceeded with the staff recommendation for language cleanup.

**SECTION 040. FLOAT BOATMAN QUALIFICATIONS – CLASSIFIED RIVERS:** The Board received comments requesting revisions to the float boatman trainee requirements regarding the level of supervision for trainees and the limitations on the number of trainees in a boat. The Board will conduct further negotiated rulemaking to give better clarity while still ensuring adequate protection and qualifications in the interest of client safety.

**SECTIONS 044. SKIING, NON-HAZARDOUS AND HAZARDOUS TERRAIN OUTFITTER, DESIGNATED AGENT, SKI GUIDE AND SKI GUIDE TRAINEE AND 046. TECHNICAL MOUNTAINEERING/ROCK CLIMBING GUIDE:** The Board received recommendations from Board staff and Technical Advisory Committee and from public commenters that would streamline the application process for skiing and mountaineering guide applicants who hold national certifications, and one commenter requested eliminating the Technical Advisory Council and its review of applicant qualifications. The Board will conduct negotiated rulemaking to look at accepting national certifications, and evaluate the rule against current industry standards to ensure minimum competency of guides. No action was taken on this rule at this time.

**SECTION 051. PLACEMENT OF HUNTING CAMPS AND LEAVING OUTFITTER'S OPERATING AREA, BIG GAME HUNTING AND INCIDENTAL TRAPPING:** Proceed with recommendation for language cleanup, and **MSC (MOTION: STARK, SECOND: HUNSUCKER; AYES – HUNSUCKER, STARK, MCQUISTON AND BAROWSKY; NAYES – NONE) ELIMINATE PARAGRAPHS 051.03.b.v and 051.03.b.vi.**

**SECTION 052. BOAT TRANSPORT OF HUNTING CLIENTS:** This is a contentious rule and the Board received opposing comments on whether to keep the rule. The Board discussed the contention on this rule, and the overlap between outfitting services between boating and hunting as it relates to this rule. The Board wants to further examine whether this rule is achieving its goals in ensuring public protection and the responsibility and liability for a client by the licensed outfitter.

**SECTION 055. BOATING CLIENT/GUIDE RATIO:** **MSC (MOTION: STARK, SECOND: HUNSUCKER; AYES – HUNSUCKER, STARK, MCQUISTON AND BAROWSKY; NAYES – NONE) REPLACE THE WORD "OWN" WITH "PROVIDE".**

**SECTION 058. NUMBER OF OUTFITTERS AND GUIDES LIMITED:** The Board had received a petition for rulemaking to open the Big Lost and Little Lost Rivers and the Big Wood and the Little Wood Rivers sections for commercial float boating. During negotiated rulemaking, the Board received opposing comments from outfitters who are licensed on those sections. Given the contentious nature of the comments and substantial change requested, further comment and participation is needed from the public and relevant agencies before taking action on this rule.

**SECTION 059. RIVER, LAKE AND RESERVOIR POWER AND FLOAT OUTFITTER LIMITS:**

The Board received comments regarding reversing the purpose of the rule and requesting the Board open all rivers, lakes, and reservoirs, except for those listed in rule. The comment was for the Board to list each river, lake, and reservoir section that would be closed for commercial activity. Commenters noted that the waters would still be subject to regulation by other federal or state agencies. The Board discussed the biological and procedural reasons for the rule and the concerns and the need for public input regarding the use of the state's natural resources. The Board discussed the availability and timing of the rulemaking procedures that allow licensees to petition the Board for rulemaking to open additional sections or activities and the Board's ability to adopt a temporary rule to allow the Board to immediately make a rule change and approve an application for activities based on the rule change. **MSC (MOTION: STARK, SECOND: MCQUISTON; AYES – STARK, MCQUISTON AND BAROWSKY; NAYES – HUNSUCKER) STRIKE LANGUAGE IN SUBSECTION 059.01 AND SUBSTITUTE LANGUAGE TO EXPRESSLY PUT LICENSEES ON NOTICE OF ABILITY TO PETITION FOR RULE CHANGE TO ADD ADDITIONAL COMMERCIAL ACTIVITIES FOR A BODY OF WATER.**

**CONT. MSC (MOTION: MCQUISTON, SECOND: STARK; AYES – HUNSUCKER, STARK, MCQUISTON AND BAROWSKY; NAYES – NONE) ACCEPT THE CHANGES RECOMMENDED AND COMMENTED ON TO SUBSECTION 59.01 AND 59.02**

**SECTION 059.05. LAKES AND RESERVOIRS (NOT OTHERWISE LIMITED).** The Board will conduct negotiated rulemaking on Section 59.05 that establishes limitations for activities and outfitters on lakes and reservoirs that were not otherwise addressed in Section 059 to update the rule to reflect the change in conditions and activities since the time the rule was initially promulgated.

**SECTION 071.** Proceed with recommendation to remove Section 071.

**SECTION 072. ELECTION OF BOARD OFFICERS: MSC (MOTION: HUNSUCKER, SECOND: STARK; AYES – HUNSUCKER, STARK, MCQUISTON AND BAROWSKY; NAYES – NONE) ELIMINATE SECTION 072.**

Lastly, the Board considered the comments and rules related to the designation of allocated deer and elk tags. Ms. Callahan updated the Board on the discussions with the IOGA and interested parties and that the parties had identified some specific topics that the statute could be amended to include, which would give the Board the necessary statutory authority to implement certain mechanisms that are requested by licensees.

**SECTION 057. DESIGNATION OF ALLOCATED DEER AND ELK TAGS: MSC (MOTION: STARK, SECOND: HUNSUCKER; AYES – HUNSUCKER, STARK, AND BAROWSKY; NAYES – MCQUISTON) DIRECT COUNSEL TO WORK WITH INTERESTED PARTIES ON STATUTE CHANGES AND RULE IMPLEMENTATION FOR A POTENTIAL STATUE CHANGE RELATING TO DESIGNATION OF ALLOCATED TAGS.**

**CONT.** Board member George McQuiston asked to go on record that he does not agree with Subsection 002.33, Definition of Outfitted Tag Use. He stated that in his opinion the tag use total should only come from the Idaho Department of Fish and Game. **MSC (MOTION: HUNSUCKER, SECOND: STARK; AYES – HUNSUCKER, STARK, AND BAROWSKY; NAYES – MCQUISTON) APPROVE SECTION 057. DESIGNATION OF ALLOCATED DEER AND ELK TAGS WITH THE RECOMMENDED CHANGES.**

**MSC (MOTION: STARK, SECOND: HUNSUCKER; AYES – HUNSUCKER, STARK, AND BAROWSKY; NAYES – MCQUISTON) APPROVE IDAPA CHAPTER 25 – IDAHO OUTFITTERS AND GUIDES LICENSING BOARD AS PENDING RULES WITH THE DIRECTION GIVEN AND WITH THE CHANGES BY MOTION AND SUBMIT TO THE LEGISLATURE FOR FINAL APPROVAL.**

**ADDITIONAL ITEMS THE BOARD HAS ADDED FOR FURTHER DISCUSSION:**

- How and when it might consider consolidating licenses when separate operating areas and activities are bought by a single outfitter.
- How it fulfills its statutory charge to ensure an outfitter has sufficient financial responsibility/capability to operate a business for the requested areas and activities, which helps to ensure that the opportunities that the outfitter will be licensed for will be made available to the public.
- Insurance requirements.

The next Board Meeting date has been set for December 10, 2019.

With no further business to come before the Board, Board Chairman Bob Barowsky adjourned the meeting at 3:10 p.m., Friday, September 27, 2019.

*Bob Barowsky*

*12-10-19*

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BOB BAROWSKY, BOARD CHAIRMAN

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Date

ATTEST:



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LORI THOMASON, EXECUTIVE DIRECTOR

*12-10-19*

\_\_\_\_\_  
Date